IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATIONS No 1770 to 1778 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

1 to 5 NO

GIRISHCHANDRA PRATAPSINH VANSIA & OTHERS

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Misc.Application No. 1770 of 2003

MR KG VAKHARIA and MR ND NANAVATI Senior Advocates with MR TUSHAR MEHTA Advocate for Petitioners

MR RC KODEKAR APP for Respondent

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 01/04/2003

C.A.V. JUDGEMENT

1. These applications are summarily rejected on 26.03.2003 and the reasons, at the request of the learned counsel for the petitioners, are later recorded as under:-

2. These applications for anticipatory bail under section 438 of the Code of Criminal Procedure are filed by the chairman, the managing director and seven other directors of the bank on whose behalf F.I.R. dated 29.1.2003 is filed in the D.C.B. Police Station of Surat by the chairman himself. During the investigation of the offences punishable under sections 406, 408, 409, 420, 120-B, 114 and 34 of the Indian Penal Code reported by the said F.I.R. registered as C.R. No.8 of 2003, the petitioners appeared to have apprehended their own arrest and, therefore, the applicants firstly approached the Sessions Court at Surat and, upon rejection of their applications, they are before this Court.

3. It is alleged in the aforesaid F.I.R. that the accused No.1, namely, Mukesh M.Desai, had, after earning the confidence of the management of the bank, interfered with the banking operations, appointed his own trusted men in the staff and violating the rules of the bank, guidelines of the Reserve Bank of India and the provisions of the Co-operative Societies Act, taken away huge amounts in the name of the other accused persons who are named in the F.I.R. as accused Nos.5 to 60. The main accused No.1 was provided with separate office and facilities in the bank itself and, in the year 2002, loans to the tune of Rs.44 crores were given away at the instance of that accused person. It was then learnt that most of the amounts given away by way of loans were transferred to other accounts in another co-operative bank from where they were credited in the accounts of nominees of the accused No.1. It was also learnt, according to the F.I.R., that the borrowers, who were granted loans at the instance of accused No.1, had only received a small amount by way of commission and rest of the amounts were taken away by accused No.1. When the bank was not left with sufficient cash reserve and liquidity, it was removed from the clearing house. At that stage, accused No.1 asked the board of directors to set the bank on fire so that no explanation has to be given and nobody has to be repaid. It is claimed in the F.I.R. and the application of the petitioners that the petitioners had started taking necessary action for recovery of the amounts and for prosecution of the accused persons by filing of the said F.I.R.

4. During the course of hearing before the Sessions Court and in the present proceedings, it was contended that the petitioners were professionals or reputed businessmen and were taking necessary steps to save the bank. It was contended on their behalf that the main accused persons had cheated the bank and the board of directors, that they were fully co-operating in the investigation of the offences and were not likely to abscond or evade the process of law.

5. On the other hand, it was submitted, on the basis of the affidavit of the investigating officer, that the petitioners had not only abdicated their responsibility as the directors of the bank but, in fact, admittedly facilitated siphoning of money by the persons originally accused in the F.I.R. Citing specific incidents of complicity or connivance of the board of directors, it was submitted that, by a written resolution dated 9.2.2002, an overdraft facility of Rs.25 crore was granted to one Manoj Vyas in the name of Manoj Corporation. That resolution was not preceded by any normal process of any proposal or application and, in fact, Manoj Corporation had in its account No.76 debit balance of around Rs.3 crore. Out of that facility, Rs.15.15 crore were transferred to one M.N.Patel of Mundeal Corporation and no such corporation or person could be found in reality during the investigation. There were many such other accounts in respect of which the regular formalities for even establishing the identity of the account holder were not complied. Several accounts in which transactions of crores of rupees were shown were opened on the basis of the forms which did not contain even the date or full address and particulars or photograph of the account holder. The day on which the bank was removed from the clearing house, i.e. 30.8.2002, entries of crores and crores of rupees were made to adjust and close certain accounts and the cash balance was not found to be according to the books of account. The series of irregular transactions and their modus operandi have been discussed in detail by the learned Sessions Judge in his elaborate judgment rejecting the applications of the petitioners and several other applicants. It is also noted by the learned Sessions Judge that according to the statements of various employees of the bank and entries in several accounts, about 4.75 crores of rupees are transferred to several accounts from the "Suspense Account" in the books of account of the bank and the board of directors appeared to have abetted such deeds.

6. It was submitted by the learned A.P.P. that the

petitioners were issued notices and orders under sections 91 and 160 of the Cr.P.C., but they had not complied with the same and co-operation on their part was lacking. It was also submitted that without custodial interrogation of the persons concerned who may be found to be involved in the offences which were admittedly committed according to the F.I.R., the methods and motives of so many apparently irregular transactions cannot be fully investigated. It was also submitted that upon the practical closure of the bank, about 50,000 depositors were left high and dry even as the Government had to order the appointment of an administrator. However, the petitioners had obtained a stay against that order with the result that the petitioners continue to be in charge of the bank. It was, in such circumstances, submitted that the petitioners were, prima facie, connected or involved in serious offences by the acts of commission, omission or connivance and collusion and the investigation would be hampered if any advance protection were granted to the petitioners. The submissions of the learned A.P.P. were supported by the judgments of the Supreme Court in STATE v. ANIL SHARMA [(1997) 7 SCC 187, ER. K.K.JERATH v. UNION TERRITORY, CHANDIGARH [AIR 1998 SC 1934] and MURALIDHARAN v. STATE OF KERALA [AIR 2001 SC 1699].

7. Having regard to the facts as above and particularly the fact that there is no dispute about the commission of the serious offences punishable under sections 406, 408, 409, 420, 120-B, 114 and 34 of the Indian Penal Code and the nature of allegations made in the affidavit of the Investigating Officer, this is not a fit case in which the judicial discretion of the court should be exercised in such manner as would hamper the investigation at the preliminary stage. It would also be inappropriate to analyse the material appearing against the petitioner at this stage in order to discern the ingredients of any particular offence since accusation against any particular applicant is yet to take shape. However, the arguments of the learned senior counsel, appearing for the petitioners, to the effect that the petitioners could at the most be accused of negligence and may be held responsible in a civil action have to be rejected at this stage in the facts of this case. The petitions are, therefore, rejected as noted earlier.

Sd/-

(D.H.Waghela,J.)

(KMG Thilake)